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## OGC Has Review

24 SEP 1954

MEMORANDUM FOR: Chief, Planning and Analysis Staff

SUBJECT: Applicability of the Whitten Amendment to CIA

1. In response to your request, a check has been made concerning the applicability of the Whitten Amendment to this Agency with particular reference to the higher "permanent" ceiling provided for by the amendments contained in Public Law 763, 83rd Congress.

2. Although the general question of applicability has never been raised formally with the Office of General Counsel, the applicability of specific provisions has been the subject of several discussions since the enactment of the original Whitten Amendment.

a. With respect to appointments, it has been agreed that the Director of Central Intelligence is authorized to make permanent appointments to this Agency.

(1) The original Whitten Amendment---Section 1302 of the Supplemental Appropriation Act, 1951, signed 27 September 1950---provided that "...In making appointments in the government service the Civil Service Commission shall make full use of its authority to make temporary appointments in order to prevent increases in the number of permanent personnel...." Executive Order 10180, Establishing Special Personnel Procedures in the Interest of the National Defense, dated 13 November 1950, provided that "...all appointments in the executive branch of the Government shall be made on a non-permanent basis except.... that permanent appointments are authorized whenever, in unusual circumstances, the Civil Service Commission for positions in the competitive service, or the head of the agency concerned for positions outside the competitive service, determines that permanent appointments are in the interest of the Government..." (emphasis supplied). Pursuant to the authority contained in E. O. 10180, the Director of Central Intelligence signed a document stating that he determined it to be in the interest of the Government to make all appointments in the Agency on a permanent basis. (This was based largely on the necessity for excluding Agency employees from social security coverage.)

(2) The second Whitten Amendment---Section 1302 of the Third Supplemental Appropriation Act, 1952, approved 5 June 1952---provided that "...and the heads of the executive departments, agencies, and corporations shall make full use of their authority to require that initial appointments to positions in

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and outside the competitive civil service shall be made on a temporary or indefinite basis in order to prevent increases in the number of permanent personnel of the Federal Government above the total number of permanent employees existing on September 1, 1950...." It was informally agreed that the Director's earlier authorization to make permanent appointments continued to be valid under this amendment.

(3) Having taken the position that the prohibition against permanent appointments is not applicable to this Agency, we may take the position that the current amendment to the Whitten Amendment which increases the ceiling to "not in excess of 10 per centum above the total number of permanent employees on September 1, 1950" is likewise not applicable.

b. With respect to permanent promotions, our position is somewhat less firm since there has been no specific provision authorizing an exception to the requirement contained in each version of the Whitten Amendment requiring that promotions be temporary. However, and this is supported by current action being taken to convert temporary promotions to permanent in departments and agencies subject to the prohibition, it may be argued that the power to promote is inherent in the power to appoint and therefore the power to make permanent appointments carries with it the power to make permanent promotions.

c. With respect to the one grade and one year limitations on promotions, these limitations were applicable only to positions subject to the Classification Act of 1949, as amended, from which this Agency is specifically exempted.

d. With respect to the required annual review of positions, it has been held that the review requirement was applicable to this Agency but that the annual report to the Post Office and Civil Service Committees and Appropriations Committees of the Senate and the House of Representatives was not required.

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3. In reviewing this background, it is necessary to keep in mind our responsibilities for providing personnel service to the National Security Council. With respect to points 2a, b, and c above, the making of permanent appointments and promotions is covered by an authorizing document from the Executive Secretary of the Council similar to the one signed by the Director.

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Chief, Plans Branch